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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,348	02/10/2004	Craig W. Roddy	HES 2004-IP-013208U1	1181

28857 7590 05/02/2006
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EXAMINER

SUCHFIELD, GEORGE A

ART UNIT	PAPER NUMBER
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3676

DATE MAILED: 05/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/775,348

Applicant(s)

RODDY, CRAIG W.

Examiner

George Suchfield

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-11 and 71-83 is/are pending in the application.
- 4a) Of the above claim(s) 71-82 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-11 and 83 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1,3-11 and 71-83 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date. 4/28/06
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Newly submitted claims 71-82 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The composition of claims 71-82 could be used in processes other than cementing a well, e.g., as a component of a concrete for use in building, highway or dam construction, or treating other permeable media, such as a soil remediation or consolidation process.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 71-82 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

3. Claims 1, 3-11 and 83 are rejected under 35 U.S.C. 102(a) as being anticipated by Berke et al (6,648,962).

Berke et al discloses processes of using an aqueous cementing composition which includes hydrated cement particulates in admixture with a hydraulic cement in the overall cementing slurry. As per claim 1, the oil well cementing composition or slurry of Berke et al is deemed to comprise a “drilling fluid”, as broadly recited, insofar as Berke et al, in one embodiment (note col. 5, lines 5-13), characterizes their well treatment composition as an “oil well drilling cement”.

As per claims 3 and 6, clearly the cementing composition and/or the hydrated cement particulates comprises an “admixture”; the recited relative amounts and ranges of hydrated

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cement particulates to hydraulic cement in claim 7 is deemed encompassed by the corresponding hydrated cement particulates to cement ranges of Berke et al (note col. 10, lines 22-32).

The steps of preparing the hydrated cement particulates as recited in claim 4 is clearly set forth in Berke et al (note col. 5, lines 37-46); and which result in the hydrated cement particulates size range of claim 10.

The cements recited in claims 5 and 83 are clearly set forth in Berke et al, such as Portland cement.

As per claims 8 and 9 also calls for coating the hydrated cement particulates (note col. 3, lines 22-32).

As per claims 11, it is deemed that the hydrated cement particulates will inherently or necessarily comprise a “density-varying” or density-affecting additive insofar as the density of the hydrated cement particulates will vary from the overall oil well cementing composition depending on, e.g., the particular hydraulic cement and slurry medium utilized.

4. Applicant's arguments filed with the amendment have been fully considered but they are not persuasive.

Contrary to applicant's arguments, the Berke et al, in one embodiment, discloses their well treatment composition as comprising an “oil well drilling cement”, which can be construed as comprising a drilling fluid, as broadly recited. Moreover, no positively recited steps of actual “drilling” appear anywhere in independent claim 1. In this regard, however, if claim 1 were amended in lines 1 and 2 to read -- A method of using a drilling fluid for drilling in a subterranean formation -- , and lines 5 and 6 were amended to read -- placing the drilling fluid

into the subterranean formation during the drilling -- , then all the above rejections would be dropped and the case could be passed for issue, absent the withdrawn composition claims.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Suchfield whose telephone number is 571-272-7036. The examiner can normally be reached on M-F (6:30 - 3:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


George Suchfield
Primary Examiner
Art Unit 3676

Gs
April 29, 2006